Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Primo Communications	)	IC No. 07-S0279038
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER ON RECONSIDERATION

Adopted: February 19, 2008 **Released: February 19, 2008**

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Primo Communications (Primo) asking us to reverse a finding that Primo changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.[1] On reconsideration, we affirm that Primo's actions violated the Commission's carrier change rules.[2]

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.[3] The rules were designed to take the profit out of slamming.[4] The Commission applied the rules to all wireline carriers,[5] and modified its existing requirements for the authorization and verification of preferred carrier changes.[6]

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.[7] Specifically, a carrier must: (1) obtain the subscriber's written or

[1] *See* Petition for Reconsideration of Primo Communications (filed November 8, 2007) (*Petition*), seeking reconsideration of *Primo Communications*, 22 FCC Rcd 19089 (2007) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). We note that the *Division Order* granted two unrelated complaints against Primo. The *Petition* seeks reconsideration of only one of the grants.

[2] *See* 47 C.F.R. §§ 64.1100 – 64.1190.

[3] *See id.*; *see also* 47 U.S.C. § 258(a).

[4] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). *See also id.* at 1518-19, para. 13.

[5] *See id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. *See id.*

[6] *See id.* at 1549, para. 66.

[7] *See* 47 C.F.R. § 64.1120; *see also* 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.[8]

4. The Commission also adopted liability rules for carriers that engage in slamming.[9] If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.[10] Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.[11]

5. The Commission received a complaint on June 22, 2007, alleging that Complainant's telecommunications service provider had been changed from Complainant's authorized carrier to Primo without Complainant's authorization.[12] Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,[13] the Division notified Primo of the complaint.[14] In its response, Primo stated that Complainant signed up for Primo's service on October 3, 2003, as he attested to in his complaint, and that Complainant has a history of non-payment. Primo also stated that it blocked Complainant's long distance service on March 6, 2007, that Primo did not bill Complainant after March 6, 2007, and that Complainant cancelled service on March 28, 2007.[15] The Division found that Primo did not submit a third party verification (TPV) or letter of agency (LOA) as required by the Commission's rules,[16] and as such failed to produce clear and convincing evidence that Complainant authorized a carrier change. Therefore, the Division found that Primo's actions resulted in an unauthorized change in Complainant's telecommunications service provider.[17] Primo seeks reconsideration of the *Division Order*.

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[8] *See* 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

[9] *See* 47 C.F.R. §§ 64.1140, 64.1160-70.

[10] *See* 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

[11] *See* 47 C.F.R. §§ 64.1140, 64.1170.

[12] Informal Complaint No. IC 07-S0279038, filed June 22, 2007.

[13] 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[14] *See* Notice of Informal Complaint No. IC 07-S0279038 to Primo from the Deputy Chief, Division, CGB, dated July 3, 2007.

[15] Primo's Response to Informal Complaint No. IC 07-S0279038, received August 27, 2007 (*Response to Complaint)*. Primo also stated that when Complainant cancelled his service with Primo on March 28, 2008, he disputed the electronic funds transfer payment and switched to Startec. *See id.*

[16] *See* 47 C.F.R. § 64.1120(c)(3)(iii).

[17] *See Division Order*, 22 FCC Rcd 19089 (2007); *see also* 47 C.F.R. § 64.1150(d).

6. In light of the *Petition*, the Division requested Complainant's preferred interexchange carrier (PIC) history from Verizon (Complainant's LEC).[18] In its response, Verizon indicated that on various dates Global Crossing Telecommunications, Inc. (Global), on behalf of several unnamed resellers, requested that Complainant's carrier be switched (Global is a facilities-based carrier and Primo utilizes Global's facilities to provide service to Primo's subscribers as a reseller).[19] The Division then requested that Global identify its resellers for various associated dates shown in Verizon's response.[20] In its response, Global identified its resellers' automatic number identification (ANI) maintenance activity for the period July 31, 2006, through August 6, 2007.[21] Global later provided a more specific description of the effect of the transactions on the service provider and the end-user.[22]

II. DISCUSSION

7. Based on the record before us, we affirm the *Division Order* and deny Primo's *Petition*. As discussed below, Primo violated the Commission's carrier change rules because Primo's actions resulted in an unauthorized switch of Complainant's service provider.

8. Section 64.1150(d) of the Commission's rules provides that the alleged unauthorized carrier shall provide within thirty days of being notified of the complaint a copy of any valid proof of verification of the carrier change.[23] We affirm our finding in the *Division Order* that Primo did not comply with this requirement. Primo argues that because Complainant became a Primo customer more than three years ago and remained a customer until March 2007, and that because Commission rules require that it keep records for only two years, it was therefore not required to provide verification records.[24] Global's ANI maintenance activity report, however, contradicts Primo's argument. The Global ANI maintenance activity report shows that, in the last two years, Complainant twice switched to a different Global reseller and twice was switched back by Primo.[25] As the Division pointed out, Primo failed to provide proof of verification for these carrier changes as required by the Commission's rules.[26]

[18] *See* e-mail and attached document thereto containing a timeline of events for Complainant from Linda Price, CGB, FCC, to Katherine A. O'Hara, Verizon, sent November 26, 2007 (LEC-supplied information).

[19] *See* e-mail from Catherine H. Palcic, Verizon, to Linda Price, CGB, FCC, sent December 4, 2007.

[20] *See* Letter to Global *re* Complainant and Complainant's telephone number, from the Deputy Chief, Division, CGB, dated December 11, 2007. Accompanying the Letter were copies of Verizon's timeline detailing Complainant's PIC history, the original complaint filed by Complainant, Primo's response to the complaint, the *Division Order*, and Primo's *Petition*.

[21] *See* Letter to Nancy A. Stevenson, Deputy Chief, CGB, FCC, from Barbara A. McNair, Regulatory Complainants Manager, Global, dated January 8, 2008.

[22] *See* electronic mail and attachment thereto expanding on the ANI maintenance activity for Complainant, from Diane Peters, Global, to Bert Weintraub, CGB, FCC, sent January 23, 2008.

[23] *See* 47 C.F.R. § 64.1150(d).

[24] *See Petition* at 1. *See* 47 C.F.R. § 64.1120(a)(ii), which provides that the submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

[25] *See* Global ANI maintenance activity report. Specifically, on October 30, 2006, there was a change from Primo to NECC; on November 30, 2006, there was a change from NECC to Primo; on January 10, 2007, there was a change from Primo to Startec; and on January 19, 2007, there was a change from Startec to Primo. *See id.*

[26] *See* 47 C.F.R. § 64.1150(d).

9. Primo also argues that Complainant's claim that he cancelled Primo's service in January 2007 is false because, according to Complainant's LEC history, Complainant used Primo's services until March 6, 2007, then on March 7, 2007, he "switched" to another provider.[27] Primo's assertion, however, is incorrect. The LEC-supplied information from Verizon indicates that on January 10, 2007, Global (on behalf of an unknown reseller) requested that the customer's toll and long distance services be switched,[28] and Global's ANI maintenance activity indicates a switch on that date from Primo to Startec.[29] Accordingly, we deny Primo's *Petition*.

III. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the Petition for Reconsideration filed by Primo Communications on November 8, 2007, IS DENIED.

11. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

[27] *See Petition* at 1. Primo does not state who initiated the switch to another carrier.

[28] *See* LEC-supplied information attachment to Verizon's e-mail at 1.

[29] Moreover, neither the LEC-supplied information nor the Global ANI maintenance activity report shows a switch on March 7, 2007.